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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92058621
Party	Defendant Dropbox, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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THRU INC.,)	
)	Cancellation No: 92058621
)	
Petitioner,)	
)	
v.)	
)	Registration No. 4,478,345
DROPBOX, INC.,)	
)	
Registrant.)	
)	
)	

DROPBOX’S OPPOSITION TO MOTION UNDER FED. R. CIV. P. 12(e) or (f)

Registrant Dropbox, Inc. (“Dropbox”), by and through its undersigned counsel, hereby responds to and opposes the March 13, 2014 Motion Under Fed. R. Civ. P. 12(e) or (f) (“Motion”) filed by Petitioner Thru Inc. (“Thru”).

I. Procedural Posture

This is a cancellation proceeding directed at Dropbox’s registration for the mark DROPBOX. Thru’s motion was filed on March 13, 2014, one week after Dropbox filed its Answer. The parties have not yet completed an exchange of Initial Disclosures, met and conferred pursuant to Rule 26, or served any discovery demands. This proceeding is thus in its infancy.

Dropbox intends to take discovery to substantiate the allegations in its affirmative defenses. Discovery was scheduled to open on April 16, 2014, but the Board, by order dated March 18, 2014, suspended these proceedings pending disposition of the Motion.

II. Thru's Motion for a More Definite Statement Is Not Permitted

Thru seeks to strike Dropbox's Seventh Affirmative Defense of unclean hands, or, in the alternative, it moves for a more definite statement. A motion for a more definite statement is only permitted as to pleadings to which a responsive pleading must be made.

Fed. R. Civ. P. 12(e); T.B.M.P. § 505. Dropbox's Answer contains no counterclaims; it is thus not a pleading to which a reply must be filed. T.B.M.P. § 311.03 ("[A] reply to an affirmative defense need not be filed. . . . Thus, while a plaintiff must file an answer to a counterclaim, a reply to an answer need not, and should not, be filed."). Accordingly, Thru is not permitted to move for a more definite statement as to Dropbox's Seventh Affirmative Defense, and that portion of the Motion must be denied. See, e.g., *Weddle v. Bayer AG Corp.*, No. 11CV817 JLS (NLS), 2012 U.S. Dist. LEXIS 40978, at *15 (S.D. Cal. Mar. 26, 2012) (denying motion for more definite statement as to affirmative defenses because answer was not a pleading to which a responsive pleading is allowed).

III. Thru's Motion to Strike Should Be Denied

Insufficient, redundant, immaterial, impertinent, or scandalous material may be stricken from a pleading pursuant to a Fed. R. Civ. P. 12(f) motion to strike, but such motions "are not favored, and matter will not be stricken unless it clearly has no bearing upon the issues in the case." T.B.M.P. § 506.01. Importantly:

The primary purpose of pleadings, under the Federal Rules of Civil Procedure, is to give fair notice of the claims or defenses asserted. Thus, the Board, in its discretion, may decline to strike even objectionable pleadings where their inclusion will not prejudice the adverse party, but rather will provide fuller notice of the basis for a claim or defense. A defense will not be stricken as insufficient if the insufficiency is not clearly apparent, or if it raises factual issues that should be determined on the merits.

Id. (emphasis added). Here, Thru essentially asserts that Dropbox's unclean hands defense

should be stricken as insufficient.

In fact, Dropbox's unclean hands defense, as pled, is sufficient, and Dropbox should be afforded the opportunity to take relevant discovery. The elements of an affirmative defense "should be stated simply, concisely, and directly" and with enough substance to provide the plaintiff fair notice of the basis of the defense. *Id.* § 311.02(b); see, e.g., *Weddle*, 2012 U.S. Dist. LEXIS 40978, at *7 ("The key to determining the sufficiency of pleading an affirmative defense is whether it gives plaintiff fair notice of the defense." (internal quotations omitted)). Here, Dropbox has pled a defense of unclean hands in that it has alleged inequitable conduct or bad faith on the part of Thru bearing on the matter at hand (Registration No. 4478345 for the DROPBOX mark). See, e.g., *Barnes & Noble, Inc. v. LSI Corp.*, 849 F. Supp. 2d 925, 942 (N.D. Cal. 2012) ("A defense of unclean hands requires a showing that the plaintiff's conduct is inequitable and that the conduct relates to the subject matter of its claims." (internal quotations omitted)).

Dropbox's affirmative defense reads as follows: "Petitioner's representations to the U.S. Patent and Trademark Office in support of its application to register the DROPBOX mark are misleading, were made in bad faith and constitute unclean hands." Answer ¶ 12. This is ample information to put Thru on notice as to the basis of Dropbox's defense—namely, the allegations that Thru made misleading and bad-faith representations to the USPTO in connection with its competing trademark application for the mark DROPBOX.

Thru has not cited in its Motion any support for its assertion that an unclean hands defense in a trademark cancellation proceeding should be subjected to a heightened pleading standard. In any event, the information contained in Dropbox's defense is sufficient to satisfy even the heightened pleading standard: it identifies the who (Thru), the what (statements made to

the USPTO), the when (during the course of Thru's prosecution of its DROPBOX trademark application), the where (the USPTO), and the how (statement were misleading and made in bad faith to advance Thru's trademark position in this proceeding). Answer ¶ 12.

IV. As Necessary, The Board Should Grant Dropbox An Opportunity To Amend Its Pleading

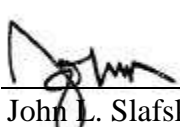

Although Dropbox believes it has provided Thru with ample notice of the basis for its unclean hands defense, in the event that the Board finds the defense to be insufficiently pled, Dropbox would request leave, at this very early stage of the proceeding, to amend its answer to amplify its allegations. See, e.g., T.B.M.P § 507.01(2) (Board should freely grant leave to amend when justice so requires.); 2 James Wm. Moore et al., Moore's Federal Practice § 12.37[4] (3d ed. 1997) ("If a motion to strike is granted, the court should ordinarily grant the defendant leave to amend so long as there is no prejudice to the opposing party.").

V. Conclusion

For the foregoing reasons, the Board should deny Thru's motion to strike or for a more definite statement in its entirety.

Dated: April 2, 2014

WILSON SONSINI GOODRICH & ROSATI
A Professional Corporation

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CERTIFICATE OF SERVICE BY MAIL

I, Elvira Minjarez, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the United States Postal Service on this date.

On this date, I served **DROPBOX'S OPPOSITION TO MOTION UNDER FED. R. CIV. P. 12(e) or (f)** on each person listed below, by placing the document described above in an envelope addressed as indicated below, which I sealed. I placed the envelope for collection and mailing with the United States Postal Service on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

John M. Cone
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on April 2, 2014.


Elvira Minjarez